

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 05 10307 JLT

VERMONT MUTUAL INSURANCE COMPANY)
as subrogee of TIMOTHY D. STEIN and)
WAYNE ROLF)
Plaintiff,)
)
v.)
)
DAVID'S FLOOR SERVICE, INC.)
and)
MIN DANG, d/b/a)
DAVID'S FLOOR SERVICE,)
Defendants)
Third-Party Plaintiffs)
and)
MUOI BUI a/k/a MUOI PHAM,)
AS ADMINISTRATRIX OF)
THE ESTATE OF TOAN BUI)
d/b/a/ BLESS HARDWOODS)
)
)
v.)
)
MUOI BUI a/k/a MUOI PHAM,)
AS ADMINISTRATRIX OF)
THE ESTATE OF TOAN BUI)
d/b/a/ BLESS HARDWOODS)
Third-Party Defendants)
_____)

**MOTION IN LIMINE OF DAVID'S FLOOR SERVICE INC.
RE: DEATH AND INJURIES OF WORKERS**

The defendant David's Floor Service Inc. hereby moves in
limine for an order precluding any reference at trial to the
deaths of Ha Vu and Toan Bui, and the injuries of Nam Dao and

Trung Le due to the fire that occurred on September 2, 2004. The defendant also seeks to preclude any photographs of the deceased and injured workers.

As reason therefor the defendant states that this is a subrogation action filed by Vermont Mutual which only involves damage to the building, and claims for contents and loss of use of the premises. There are no personal injury or wrongful death claims associated with this federal court action. There is no reason for the jury to know that there were two deaths, and two injured workers, associated with this fire. The deaths and injuries are not relevant to any material issues in this case and would only serve to prejudice the jury. "Trial judges must take care to avoid exposing the jury unnecessarily to inflammatory material that might inflame the jurors' emotions and possibly deprive the defendant of an impartial jury." Commonwealth v. Berry, 420 Mass. 95, 109 (1995).

The defendant,
David's Floor Service, Inc.,
by its attorney,

Date: August 11, 2006

/s/ Susan Johnson Bowen
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on August 11, 2006.

/s/Susan Johnson Bowen